

STATE OF NEW MEXICO
CHILDREN, YOUTH AND FAMILIES DEPARTMENT
AGREEMENT

To provide financial support to Dolly Parton's Imagination Library community programs in New Mexico for ECS

THIS AGREEMENT is made and entered into by and between the State of New Mexico, **CHILDREN, YOUTH AND FAMILIES DEPARTMENT**, hereinafter referred to as the "Agency," and **Southwest New Mexico Council of Governments**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed by the Agency.

WHEREAS, the Agency is the state agency designated to receive and administer state funds and the Agency desires to engage and the contractor is willing to provide the services outlined pursuant to Article II - Scope of Work.

NOW THEREFORE, the Agency and the Contractor in consideration of mutual covenants and agreements herein contained, do hereby agree as follows:

ARTICLE I. Term of Agreement

THIS AGREEMENT SHALL BECOME EFFECTIVE AS OF THE DATE UPON WHICH IT IS EXECUTED BY AGENCY SECRETARY OR DESIGNEE. This Agreement shall terminate on **(June 30, 2019)** unless terminated pursuant to Article VI (Termination of Agreement), or Article XXIII (Appropriations).

ARTICLE II. Scope of Work

The Contractor shall provide the program of services as set forth in the scope of work which is attached hereto as "**Attachment 1 – Scope of Work**" and incorporated herein by reference, unless amended or terminated pursuant to Article VI (Termination of Agreement), or Article XXIII (Appropriations), infra. In consideration for the provision of those services, the Agency agrees to purchase and the Contractor agrees to perform the services identified in the Scope of Work.

ARTICLE III. Limitation of Cost

The total amount of the monies payable to the Contractor under this Agreement shall not exceed **Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)**. The annual budget is attached hereto as "**Attachment 2 – Budget**" and incorporated herein by reference.

ARTICLE IV. Payment

The Agency shall make monthly payments to the Contractor for services and costs specified in **Attachment 2 - Budget**. The Contractor shall submit certified and documented invoices and vouchers monthly for actual work performed and expenses incurred to the Agency. The Contractor's failure to submit such payment vouchers, invoices, and supporting documentation within fifteen (15) days after they are due may result in the non-availability of funds for payment and/or the denial of payment by the Agency.

ARTICLE V. Return of Funds

Upon termination of this Agreement, or after the services provided for herein have been rendered, surplus money, if any, shall be returned by the Contractor to the Agency.

ARTICLE VI. Termination of Agreement

A. Grounds. The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency's uncured, material breach of this Agreement.

B. Notice: Agency Opportunity to Cure.

1. Except as otherwise provided in Article (VI)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Article XXIII, "Appropriations", of this Agreement.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

D. Termination Management. Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

ARTICLE VII. Funds Accountability

The parties shall provide for strict accountability of all monies made subject to this Agreement. The Contractor shall maintain fiscal records, follow generally accepted accounting principles, and account for all receipts and disbursements of funds transferred to the Contractor pursuant to this Agreement. The Contractor will include all monies made subject to this Agreement in the annual audit and will provide the Agency with a copy of the annual audit.

ARTICLE VIII. Maintenance of Records

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. The Contractor agrees to comply with the requirements and regulations set forth in **Attachment 3—Administrative and Fiscal Standards**, unless the Contractor effectively demonstrates in writing, with written approval from CYFD, that any specific Standard is inapplicable to such Contractor.

ARTICLE IX. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

ARTICLE X. Amendments

- A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.
- B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of

the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article VI herein, or to agree to the reduced funding.

ARTICLE XI. Assignment

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

ARTICLE XII. Applicable Law

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

ARTICLE XIII. Acquisition of Property

The parties agree that neither party shall acquire any property as the result of this Agreement.

ARTICLE XIV. Liability

Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation or alleged violation or requirements applicable to the performance of the Agreement. Each party shall be liable for its actions according to this Agreement subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et. seq., NMSA 1978, as amended.

ARTICLE XV. Execution of Documents

The Agency and the Contractor agree to execute any document(s) necessary to implement the terms of this Agreement.

ARTICLE XVI. Sub-Contracts

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval by the CYFD Secretary or Designee. No such subcontract shall relieve the primary Contractor from any obligations and liabilities under this Agreement, nor shall subcontract obligate direct payment from the Procuring Agency. Contractor must notify subcontractors that they are subject to Article VIII - Maintenance of Records of this agreement.

ARTICLE XVII. Equal Opportunity Compliance

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

ARTICLE XVIII. Workers' Compensation

The Contractor agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

ARTICLE XIX. Lobbying Certification

The Contractor, by signing below, certifies to the best of his/her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid by or on the behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit a Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions. The undersigned shall require that the language of this certification be included in the award document for sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of facts upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. (United States Code). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

ARTICLE XX. New Mexico Employees Health Coverage

(Governmental entities are excluded from this provision)

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.

ARTICLE XXI. Background Checks

CYFD contractors that have or could have primary custody of children for at least twenty hours per week are required to comply with NMAC 8.8.3 et. seq. requiring background checks on any employee, staff, volunteer or student intern, that has direct care responsibilities or potential unsupervised physical access to clients. The contractor must submit to CYFD Background Check Unit fingerprint cards and the appropriate fee for such employees, volunteers or staff required to have background checks. CYFD Background Check Unit will conduct nationwide, state and abuse and neglect background checks on required staff or volunteers in accordance with NMAC 8.8.3 standards. A CYFD eligibility letter must be in the employee, volunteer or staff member's personnel file prior to that individual having any unsupervised direct contact or unsupervised potential access to clients.

ARTICLE XXII. Health Insurance Portability and Accountability Act of 1996

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996, and the terms in **Attachment 4, Business Associate Agreement**, which is attached and incorporated by reference.

ARTICLE XXIII. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

IN WITNESS WHEREOF, the Agency and the Contractor have caused this Agreement to be executed, said Agreement to become effective as of the date set forth below upon which it is executed by Agency Secretary or Designee.

Contractor – Southwest New Mexico Council of Governments

Alex C. Brown
Authorized Signatory

Date: 2/11/16

Vice Chair
Printed Title of Authorized Signatory

N/A
Legal Counsel, Contractor

Date: _____

Agency – Children, Youth and Families Department

Annette Roman
Secretary or Designee, CYFD

Date: 3/1/16

N/A
CYFD, Chief Information Officer

Date: _____

Approved as to legal form and sufficiency.

John
Office of General Counsel, CYFD

Date: 2/16/16

Attachment 1 - Scope of Work

Southwest New Mexico Council of Governments, Region-District 5

Purpose

To provide financial support to Dolly Parton's Imagination Library community programs in New Mexico by establishing a community grant program that will provide eligible community programs with matching grants to pay for books that will be provided to children enrolled with the Dolly Parton Imagination Library Program.

Objective #1

Provide matching funds for community-based Dolly Parton's Imagination Library programs.

Objective #2

Provide financial support for the establishment of Imagination Library programs statewide so that children in New Mexico have access to age-appropriate books.

Goal

Increase the language and literacy skills of children entering kindergarten.

Activities:

The Contractor Shall

1. Establish an application process approved by the Agency, Office of Child Development and provide grants to community programs that meet the following qualification and eligibility criteria to participate as a community program:
 - a. Have an established formal agreement with the Dolly Parton Imagination Library program.
 - b. Have an established formal agreement with the New Mexico Imagination Library program state organization.
 - c. Must be fiscally solvent.
 - d. Have the capacity and infrastructure necessary to administer the Imagination Library program in their designated area.
2. The grants must match the funds raised by the community program, and provide a monthly reimbursement of fifty percent (50%) for each participating community program's total expenditure for books being provided to children enrolled in the Dolly Parton's Imagination Library program.
3. The Contractor may claim up to ten percent (10%) of the annual amount allocated to them through this Agreement as reimbursement for expenditures necessary to administer these funds.
4. Provide annual reports at the end of each fiscal year to the Agency. The reports shall include: Name/Location of service delivery area of grantees; number of children being served; and the number of children on a waiting list.

5. Submit monthly invoices, by the 15th of each month, to the Agency Program Monitor: CYFD/ECS/OCD, Attention: Judy Paiz, PO Drawer 5160, Santa Fe, New Mexico 87502-5160.

Attachment 2 - Budget
Southwest New Mexico Council of Governments, Region-District 5

FY16 Funding includes 10% Admin Fee	\$100,000.00
FY17 Funding includes 10% Admin Fee	\$100,000.00
FY18 Funding includes 10% Admin Fee	\$100,000.00
<u>FY19 Funding includes 10% Admin Fee</u>	<u>\$100,000.00</u>
Total shall not exceed	\$400,000.00

All expenses, if applicable will be paid in accordance with the Department of Finance and Administration (DFA) Rule 2.42.2 NMAC.

Funding Source:

State General Funds

Attachment 3

CHILDREN, YOUTH AND FAMILIES DEPARTMENT'S
ADMINISTRATIVE
AND
FISCAL STANDARDS

For Sole Proprietors,

For Non-Profit Organizations,

Local Bodies of Government,

And

For-Profit Incorporated Entities

Revised September 3, 2013

Note: All contractors are required to adhere to all local, state and federal regulations as applicable to their operations. All contractors are required to follow audit and reporting requirements set forth in this document. In the event of a contradiction between these standards and contract requirements the contract agreement supersedes the Administrative and Fiscal Standards.

ADMINISTRATIVE STANDARDS

For Non-Profit Organizations (with the exception of New Mexico higher education institutions)

1. The Board shall ensure that the agency has current articles of incorporation that meet all of the legal requirements of the governmental jurisdiction in which the contractor is located.
2. The Board shall ensure that the agency has current by laws that are filed with the appropriate local, state, or federal body. At a minimum, the agency by-laws should include:
 - a. Membership (types, qualification, rights, duties);
 - b. Size of Board of Directors;
 - c. Method of selection and removal;
 - d. Duties and responsibilities of officers;
 - e. Committees;
 - f. Quorums;
 - g. Recording of minutes;
 - h. Method for amending by-laws.
3. The Board shall ensure that the agency complies with applicable legal requirements and regulations of all governmental and legally authorized agencies under whose authorities it operates. These include, but are not limited to those regarding equal employment opportunity, workers compensation, unemployment insurance, affirmative action, safety, licensing, etc.
4. Board members shall be residents of the area served by the organization and representative of the social, economic, linguistic, ethnic, and racial target population. The agency shall not employ a person related to a Board member by consanguinity or affinity within the third degree. This includes, but is not limited to, spouse, mother, father, brother, sister, grandparents, aunt, uncle, niece, nephew, first cousins, mother-in-law, father-in-law, brother-in-law or sister-in-law.
5. A permanent record shall be kept of all meetings of the Board. Minutes of the meetings of the agency's Board are required in order to accurately record the decisions made and actions taken. These minutes shall include, but not be limited to, meeting date, names of members attending, topic discussed, decisions reached, actions taken, and attachment of any documents referenced. Board minutes shall be signed and approved by an officer of the Board.

For All Contractors

Personnel

1. The contractor shall have a current and dated organization chart that accurately reflects the staff structure of authority, responsibility and accountability within the organization. The organizational chart must illustrate the relationship of each position or department to all other positions or departments within the organization.

2. The contractor shall have written personnel policies and procedures. All policies and procedures shall be reviewed annually, and any changes, additions, deletions, etc., shall be dated. Procedures must be in place that allows employees to provide input into changes in agency and personnel policies and procedures.
3. The contractor shall maintain current, written job descriptions and job qualifications for all positions (staff, consultants and direct service volunteers) in the agency. Each job description shall include, at a minimum:
 - a. Job title;
 - b. Salary range;
 - c. Duties;
 - d. Responsibilities of the positions;
 - e. Required minimum experience;
 - f. Required minimum training;
 - g. Required minimum education.
4. The contractor shall maintain a current, accurate and confidential personnel record for each paid and direct service volunteer employee. A personnel record on each employee shall contain, at a minimum:
 - a. Job description;
 - b. Initial application/resume;
 - c. Documentation of reference letters;
 - d. Result of employment investigation;
 - e. Background checks:
 1. CYFD contractors that have or could have primary custody of children for at least twenty hours per week are required to comply with NMAC 8.8.3 et. seq. requiring background checks on any employee, staff, volunteer or student intern, that has direct care responsibilities or potential unsupervised physical access to clients. The contractor must submit to CYFD Background Check Unit fingerprint cards and the appropriate fee for such employees, volunteers or staff required having background checks. CYFD Background Check Unit will conduct nationwide, state and abuse and neglect background checks on required staff or volunteers in accordance with NMAC 8.8.3 standards. A CYFD eligibility letter must be in the employee, volunteer or staff member's personnel file prior to that individual having any unsupervised direct contact or unsupervised potential access to clients.
 - f. Education/experience required;
 - g. Wage and salary information;
 - h. Job performance evaluation;
 - i. Documentation/verification of all previous and ongoing training (including all component specific training and education);
 - j. Incident reports;
 - k. Commendations or disciplinary actions (if any).

This information must be reliable, accurate and current. All employee records must be kept in a locked file to ensure confidentiality.

5. The contractor shall be headed by a director. The director shall be responsible for the daily operation of the agency through decision-making, authorization of expenditures, and the implementation of policies and procedures.

Physical Facilities

The physical facilities must meet all licensing requirements per classification and should be located, constructed, equipped and operated to promote the efficient and effective conduct of the contractor's programs, to protect the health and safety of the persons serviced and the staff to promote the integration of those served into the community, to be accessible to persons served, staff and the community, meet the American's with Disabilities Act (ADA) and the Drug-Free Workplace Act of 1988.

FISCAL STANDARDS

For All Contractors

Compliance

1. The contractor shall comply with all federal and state statutes, rules and regulations. Cost principles, administrative requirements and audit requirements, applicable to federal grants shall apply to state funds. See attached Source Sheet.
2. The contractor shall comply with all aspects of the provision of the contact, including all insurance, bonding and audit and financial reporting requirements.

Insurance

1. The contractor, with the exception of New Mexico higher education institutions, shall obtain and maintain at all times during the term of this contract an Employee Dishonesty Policy covering the activities of the contractor in the amount of no less than 25% of the total (cumulative) dollar amount of the current CYFD contract(s).
2. The contractor shall obtain and maintain at all times during the term of this contract a general and professional liability insurance policy issued by an insurance company licensed to do business in the State of New Mexico. The policy shall include liability insurance coverage provided in the amount of at least \$100,000 for damage to or destruction of property arising out of a single occurrence; \$300,000 to any person for any number of claims arising out of a single occurrence for all damages other than property damage; or \$500,000 for all claims arising out of a single occurrence. The policy shall be secured by the contractor within thirty (30) days of the effective date of the current contract.
3. The contractor, with the exception of New Mexico higher education institutions if insured by General Services Department's Risk Management Division, shall secure and maintain sufficient fire and extended hazard insurance on all property in the custody of the contractor, which is furnished or owned by the Department or in which the Department has a financial interest, within thirty (30) days of the effective date of the current agreement. Sufficient insurance, for the purposes of this paragraph, means enough to cover CYFD's loss, if any to such property, in the event of fire or other hazard.

4. The contractor, with the exception of New Mexico higher education institutions if insured by General Services Department's Risk Management Division, shall name Children, Youth and Families Department as an "Additional Insured" with the insurance carrier of the contractor's liability insurance. A copy of the contractor's "Certificate of Liability Insurance" proving compliance with all the above insurance requirements must be available upon request.

Fiscal Books of Records

The contractor must maintain the following books of record:

1. Chart of Accounts
2. General Ledger
3. Cash receipts and Cash Disbursements Journals
4. General Journal of adjusting entries, correcting entries, accrual entries, and cost allocation entries if not provided for in cash journals.
5. Subsidiary ledgers, if applicable to the organization.
6. Any Capital Outlay Inventory purchased with CYFD funding includes at a minimum:
 - a. Description of property;
 - b. Serial number or other ID number;
 - c. Date of purchase;
 - d. Acquisition cost by funding source(s);
 - e. Location and use of property;
 - f. Disposition data including date and price, if any.
7. Payroll journals and employee earnings records.
8. Fiscal Policy and Procedures that must include:
 - a. Handling of cash/checks;
 - b. Handling of voided checks;
 - c. Authorized check signatures;
 - d. Bank reconciliations;
 - e. Separation of duties;
 - f. Accounting system;
 - g. Travel;
 - h. Cost allocation method;
 - i. Accounting policies for donations.

Reports

1. The contractor shall complete in full the State and Federal payroll tax forms in accordance with required time period and shall insure payroll taxes are paid within the required time frame.

2. The contractor shall complete in full and submit the required forms of the State Department of Labor.
3. The contractor shall submit timely program and financial reports to the funding agencies as specified in the contracts.

Retention of Records

The following are the requirements for the retention of financial records:

1. The contractor shall maintain for three (3) years, (in addition to current year records) detailed accounting and billing records which indicate the date, time, and nature of services rendered, records relating to contract services, and all operating financial documentation which shall be subject to inspection by the Department and if applicable, the State Auditor or their designee.
2. The Department shall have a right to audit billings and related documents both before and after payment. Payments made under a contract between the contractor and the Department shall not foreclose the right of the Department to recover excessive, illegal payments, and/or payments which are not in accordance with the contract.
3. The contractor shall maintain the funds from the CYFD contract separately in accurate financial records, books, files, and reports in accordance with generally accepted accounting principles, state and federal laws and regulation, and the requirements of the Departments as described in this Administrative and Fiscal Standards Guidance.
4. The financial management systems established by the contractor shall ensure it provides fiscal and budgetary controls as well as sound accounting procedures. A Schedule of Revenues & Expenditures Budget to Actual Comparison for each contract must be prepared and submitted to the Department at the same time as the annual financial audit or financial statement. The Schedule must include the approved original budget for the fiscal year, revised budget, actual revenue and expenditures and a variance column.

Audits

NOTE: Audit and financial reporting requirements are applicable to all contractors of Children, Youth and Families Department.

1. Sole proprietor contractors receiving Department funds under \$100,000.00 must submit to the Department the Sole Proprietor Business Reporting Form "Schedule C". Sole Proprietor billings are subject to review by the CYFD contract and program site reviewers and must be available upon request. A Sole Proprietorship is a type of business entity that is owned and run by one individual and in which there is no legal distinction between the owner and the business.
2. Audits for a contractor receiving under \$150,000.00 per year in cumulative Department funds (a total of all CYFD contracts awarded to the contractor within a fiscal year) whose Board has elected to not conduct an audit must comply with the following:
 - a) The contractor shall prepare financial statements that include a Revenue and Expenditure – Budget to Actual Comparison, Balance Sheet or Statement of New

Assets and Income Statement or Statement of Activities. The contractor shall disclose the method of accounting used (cash or accrual) to prepare such statements. The Revenues and Expenditures – Budget to Actual Comparison statement must include the original budget for the fiscal year as approved by the Board, revised budget, actual revenue and expenditures and variance column. A cash disbursement and cash receipt journal cannot take the place of the Balance Sheet and Income Statement. These financial statements shall be available upon request to the Department's Contract/Audit Unit within three (3) months of the contractor's fiscal year end.

- b) This section (Section 2) does not apply to sole proprietor contracts covered under Audits section 1.
- 3. Audits for a contractor receiving \$150,000.00 to \$300,000.00 per year in cumulative Department funds (a total of all CYFD contracts awarded to the contractor with in a fiscal year) whose Board has elected to not conduct an audit must comply with the following:
 - a) The contractor shall have an Independent Auditor's Report of Agreed-Upon Procedures (AUP) to ensure compliance with contract requirements in accordance with General Accepted Accounting Practice (GAAP). The AUP report shall be available upon request to the Department's Contract/Audit Unit within nine (9) months of the contractor's fiscal year end.
 - b) The contractor shall ensure that the selected accounting firm performing the AUP report is rotated every six (6) years (or less if mandated by the State Auditor) with a minimum two-year break. The selected accounting firm shall not have provided non-auditing services within the year being reviewed.
- 4. Audits for a contractor receiving \$300,000.00 or greater per year in cumulative Department funds (a total of all CYFD contracts awarded to the contractor with in a fiscal year):
 - a) The contractor shall have an Independent Audit Report that conforms to the General Accounting Standards (Yellow Book) as recommended by GAO. This Independent Audit Report shall be available upon request to the Department's Contract/Audit Unit within nine (9) months of the contractor's fiscal year end. The contractor must also submit a copy of any Management Letter Comments issued by the Independent Auditor in a separate report.
 - b) The contractor shall ensure that the auditor or auditing firm performing the audit report is rotated every six (6) years (or less if mandated by the State Auditor) with a minimum two year break. The selected auditor shall not have provided non-auditing services within the year being audited.
- 5. Audit for an contractor receiving over \$500,000.00 per year in cumulative Federal funds (a total of all contracts awarded to the contractor with in a fiscal year) the contractor must receive an audit as required by the U.S. Office of Management and Budget, Circular A-133 Audits of States, Local Governments and Non-Profit Organizations, and U.S. Office of Management and Budget, Circular A-21, Cost Principles for Educational Institutions. The contractor must have available upon request a copy of any Management Letter Comments issued by the Independent Auditor in a separate report.

- a) The Contractor must have available upon request their audited financial statements within nine (9) months of their fiscal year end to the Agency's Contract/Audit Unit. The Contractor must also have available upon request the Management Letter Comments issued by the Independent Auditor in a separate report.
- b) The contractor shall ensure that the auditor or auditing firm performing the audit report is rotated every six (6) years (or less if mandated by the State Auditor) with a minimum two-year break. The selected auditor shall not have provided non-auditing services within the year being audited.

6. Financial Statements, AUP and Audits must be mailed to:

Children, Youth and Families Department
Contract/Audit Unit
P.O. Box 5160
Santa Fe, NM 87502

SOURCE SHEET

ADMINISTRATIVE REQUIREMENTS

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; also known as the Common Rule.

OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

COST PRINCIPLES

OMB Circular A-21, Cost Principles for Educational Institutions

OMB Circular A-87, Cost Principles for State and Local Governments.

OMB Circular A-122, Cost Principles for Non-Profit Organizations.

FASB and AICPA Statements and Professional Pronouncements.

AUDITS

OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations.

OMB Compliance Supplement for Audits of States, Local Governments and Non-Profit Organizations.

U.S. General Accounting Office, Government Auditing Standards, (The Yellow Book, current revision).

FASB and AICPA Statements and Professional Pronouncements.

Attachment 4 – Business Associate Agreement

This is a business associate agreement in compliance with 45 CFR Section 160.504(e)(2) of the HIPAA privacy rule. Contractor understands that it may be considered a business associate of the Department under the HIPAA Privacy and Security Rules. Accordingly, the parties agree:

- The disclosures the Department will make to Contractor of any information that identifies an individual and includes information about the individual's health (protected health information), whether in electronic or physical form, shall be limited to the minimum reasonably necessary for Contractor's delivery of services described in the Scope of Work to which the parties have agreed to in the Contract.
- Any disclosures by Contractor of any individual's protected health information inconsistent with this agreement are strictly prohibited and shall be cause for termination of the Contract. Contractor shall take all reasonable steps to avoid such disclosures, including but not limited to implementation of all practical administrative, physical and technical safeguards.
- After the expiration of this Contract, whether because a party has cancelled it, it is fully executed or for any other cause, Contractor shall return all documents containing any individual's protected health information to the Department. Contractor also agrees that it shall take reasonable affirmative precautions to avoid any unauthorized disclosures of protected health information to third parties.
- Contractor understands it is responsible for reporting unauthorized disclosures, including but not limited to electronic security violations, to the Department's privacy office or the federal Office of Civil Rights. Contractor also understands it is responsible for reporting any other disclosure for purposes other than treatment, payment or operations to the Department's privacy office.
- Contractor agrees to bind their agents and subcontractors to the terms of this agreement.
- Contractor understands an individual has the right to inspect and request changes to the protected health information the parties use or create and that an appropriate privacy officer or the federal Office of Civil Rights has the authority to inspect the parties' procedures for management of the individual's protected health information.